

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-V-

NATHANIEL CHASTAIN,

Defendant.

22-CR-305 (JMF)

ORDER


JESSE M. FURMAN, United States District Judge:

Attached to this Order are the following:

- the draft jury charge that was considered at the charge conference held on April 28, 2023; and
- the final jury charge that was delivered to the jury on May 1, 2023.

SO ORDERED.

Dated: May 2, 2023
New York, New York


JESSE M. FURMAN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
:
-v- :
:
NATHANIEL CHASTAIN, :
:
Defendant. :
:
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22-CR-305 (JMF)

JURY CHARGE

April 28, 2023

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1 I. GENERAL INTRODUCTORY CHARGES

2 Members of the jury, you have now heard all of the evidence and the lawyers' closing
3 arguments. It is my duty at this point to instruct you as to the law. I am going to read my instructions to
4 you. It is not my favorite way to communicate — and not the most scintillating thing to listen to — but
5 there is a need for precision, and it is important that I get the words just right, and so that is why I will be
6 reading.

7 I have given you a copy of my instructions to follow along because they cover many points.
8 Please limit yourself to following along; that is, do *not* read ahead in the instructions. If you find it
9 easier to listen and understand while you are following along with me, please do so. If you would
10 prefer, you can just listen and not follow along. In the unlikely event that I deviate from the written
11 instructions, it is my oral instructions that govern and that you must follow. But you may take your
12 copy of the instructions with you into the jury room so you can consult it if you want to re-read any
13 portion of the charge to facilitate your deliberations.

14 For now, listen carefully and try to concentrate on the substance of what I'm saying. You should
15 not single out any instruction as alone stating the law. Instead, you should consider my instructions as a
16 whole when you retire to deliberate in the jury room.

17 My instructions to you will be in three parts.

18 First, I will give you general instructions — for example, about your role as the jury, what you
19 can and cannot consider in your deliberations, and the burden of proof.

20 Second, I will describe the law that you must apply to the facts as you find them to be established
21 by the evidence.

22 Finally, I will give you some instructions for your deliberations.
23

1 Role of the Court and the Jury

2 You, the members of the jury, are the sole and exclusive judges of the facts. You must weigh
3 and consider the evidence without regard to sympathy, prejudice, or passion for or against any party. It
4 is your duty to accept my instructions as to the law and to apply them to the facts as you determine them.
5 If either party has stated a legal principle differently from any that I state to you in my instructions, it is
6 my instructions that you must follow.

7
8 The Parties

9 In reaching your verdict, you must remember that all parties stand equal before a jury in the
10 courts of the United States. The fact that the Government is a party and the prosecution is brought in the
11 name of the United States does not entitle the Government or its witnesses to any greater consideration
12 than that accorded to any other party. By the same token, you must give it no less deference. The
13 Government and the defendant, Nathaniel Chastain, stand on equal footing before you.

14 It would be improper for you to consider, in reaching your decision as to whether the
15 Government sustained its burden of proof, any personal feelings you may have about the defendant's
16 race, national origin, religious beliefs, sex, or age. All persons are entitled to the same presumption of
17 innocence and the Government has the same burden of proof with respect to all persons.

18
19 Conduct of Counsel

20 The personalities and the conduct of counsel are not in any way at issue. If you formed opinions
21 of any kind about any of the lawyers in the case, favorable or unfavorable, whether you approved or
22 disapproved of their behavior, those opinions should not enter into your deliberations.

1 In addition, remember that it is the duty of a lawyer to object when the other side offers
2 testimony or other evidence that the lawyer believes is not properly admissible. Therefore, you should
3 draw no inference from the fact that there was an objection to any testimony or evidence. Nor should
4 you draw any inference related to the weight or importance of any testimony or evidence from the fact
5 that I sustained or overruled an objection. Simply because I have permitted certain testimony or
6 evidence to be introduced does not mean that I have decided on its importance or significance. That is
7 for you to decide.

8 9 Presumption of Innocence and Burden of Proof

10 The defendant has pleaded not guilty to the charges against him. As a result of that plea of not
11 guilty, the burden is on the Government to prove guilt beyond a reasonable doubt. This burden never
12 shifts to a defendant for the simple reason that the law never imposes upon a defendant in a criminal
13 case the burden or duty of testifying, or calling any witness, or locating or producing any evidence. The
14 fact that the defendant presented evidence does not shift the burden to him.

15 Furthermore, the law presumes the defendant to be innocent of the charges against him. The
16 presumption of innocence was in his favor when the trial began, continued in his favor throughout the
17 entire trial, remains with him even as I speak to you now, and persists in his favor as to each charged
18 crime during the course of your deliberations in the jury room, unless and until the Government proves
19 beyond a reasonable doubt that he committed the charged crime.

20 21 Proof Beyond a Reasonable Doubt

22 The question that naturally arises is, "What is a reasonable doubt?" A reasonable doubt is a
23 doubt based on your reason, your judgment, your experience, and your common sense. It is a doubt that

1 a reasonable person has after carefully weighing all the evidence. It is a doubt founded in reason and
2 arising out of the evidence in the case — or the lack of evidence. A reasonable doubt is not caprice or
3 whim. It is not speculation or suspicion.

4 Proof beyond a *reasonable* doubt does not mean proof beyond all *possible* doubt. It is
5 practically impossible for a person to be absolutely and completely convinced of any disputed fact that,
6 by its very nature, cannot be proved with mathematical certainty. The Government's burden is to
7 establish guilt beyond a *reasonable* doubt, not all *possible* doubt.

8 If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say
9 that you are not satisfied with the guilt of the defendant, that you do not have an abiding belief of the
10 defendant's guilt — in other words, if you have such a doubt as would reasonably cause a prudent
11 person to hesitate in acting in matters of importance in his or her own affairs — then you have a
12 reasonable doubt, and in that circumstance it is your duty to acquit.

13 On the other hand, if, after a fair and impartial consideration of all the evidence, you can
14 candidly and honestly say that you do have an abiding belief of the defendant's guilt, such a belief as a
15 prudent person would be willing to act upon in important matters in the personal affairs of his or her
16 own life, then you have no reasonable doubt, and in that circumstance it is your duty to convict.

17 18 Direct and Circumstantial Evidence

19 There are two types of evidence that you may properly use in deciding whether the defendant is
20 guilty or not guilty of the crimes with which he is charged.

21 One type of evidence is called direct evidence. Direct evidence of a fact in issue is presented
22 when a witness testifies to that fact based on what he or she personally saw, heard, or otherwise

1 observed through the five senses. The second type of evidence is circumstantial evidence.

2 Circumstantial evidence is evidence that tends to prove a disputed fact indirectly by proof of other facts.

3 There is a simple example of circumstantial evidence that is often used in this courthouse.

4 Assume that when you came into the courthouse this morning, the sun was shining and it was a nice day
5 outside. Also assume that the courtroom shades were drawn and you could not look outside. Assume
6 further that as you were sitting here, someone walked in with an umbrella that was dripping wet, and
7 then, a few moments later, somebody else walked in with a raincoat that was also dripping wet.

8 Now, because you could not look outside the courtroom and you could not see whether it was
9 raining, you would have no direct evidence of that fact. But, on the combination of facts that I have
10 asked you to assume, it would be reasonable and logical for you to conclude that it was raining.

11 That is all there is to circumstantial evidence. You infer on the basis of your reason, experience,
12 and common sense from one established fact the existence or the nonexistence of some other fact.

13 The matter of drawing inferences from facts in evidence is not a matter of guesswork or
14 speculation. An inference is a logical, factual conclusion that you might reasonably draw from other
15 facts that have been proved. It is for you, and you alone, to decide what inferences you will draw.

16 Many material facts, such as a person's state of mind, are not easily proved by direct evidence.
17 Usually such facts are established by circumstantial evidence and the reasonable inferences you draw.
18 Circumstantial evidence may be given as much weight as direct evidence. The law makes no distinction
19 between direct and circumstantial evidence. The law simply requires that before convicting a defendant,
20 you must be satisfied of the defendant's guilt beyond a reasonable doubt, based on all of the evidence in
21 the case.

1 What Is and What Is Not Evidence

2 What, then, is the evidence in the case?

3 The evidence in this case is (1) the sworn testimony of the witnesses, (2) the exhibits received
4 into evidence, and (3) any stipulations made by the parties. Anything else is not evidence.

5 For example, the questions posed to a witness are not evidence: It is the witnesses' answers that
6 are evidence, not the questions. In addition, exhibits marked for identification but not admitted by me
7 are not evidence. Nor are materials brought forth only to refresh a witness's recollection. Moreover,
8 testimony that has been stricken or excluded by me is not evidence and may not be considered by you in
9 rendering your verdict.

10 Along these lines, we may have, among the exhibits received in evidence, some documents that
11 are redacted. "Redacted" means that part of the document was taken or blacked out. You are to concern
12 yourself only with the part of the document that has been admitted into evidence. You should not
13 consider any possible reason why the other part of it has been deleted or blacked out.

14 Arguments by the advocates are also not evidence. What you heard during the opening
15 statements and summations is merely intended to help you understand the evidence and reach your
16 verdict. If your recollection of the facts differs from the lawyers' statements, you should rely on your
17 recollection. If a lawyer made a statement during his or her opening or summation and you find that
18 there is no evidence to support the statement, you should disregard the statement.

19 Finally, any statements that I may have made during the trial or during these instructions do not
20 constitute evidence. At times, I may have admonished a witness or directed a witness to be responsive
21 to questions or to keep his or her voice up. At times, I may have asked a question myself. Any
22 questions that I asked, or instructions that I gave, were intended only to clarify the presentation of
23 evidence and to bring out something that I thought might be unclear. You should draw no inference or

1 conclusion of any kind, favorable or unfavorable, with respect to any witness or any party in the case, by
2 reason of any comment, question, or instruction of mine. The rulings I have made during the trial and
3 these instructions are no indication of my views of what your decision should be. Nor should you infer
4 that I have any views as to the credibility of any witness, as to the weight of the evidence, or as to how
5 you should decide any issue that is before you. That is entirely your role.

6
7 Credibility of Witnesses

8 How do you evaluate the credibility or believability of the witnesses? The answer is that you use
9 your common sense. There is no magic formula by which you can evaluate testimony. You may use the
10 same tests here that you use in your everyday life when evaluating statements made by others to you.
11 You may ask yourselves: Did the witness impress you as open, honest, and candid? How responsive
12 was the witness to the questions asked on direct examination and on cross-examination?

13 If you find that a witness intentionally told a falsehood, that is always a matter of importance you
14 should weigh carefully. On the other hand, a witness may be inaccurate, contradictory, or even
15 untruthful in some respects and entirely believable and truthful in other respects. It is for you to
16 determine whether such inconsistencies are significant or inconsequential, and whether to accept or
17 reject all of the testimony of any witness, or to accept or reject only portions.

18 You are not required to accept testimony even though the testimony is uncontradicted and the
19 witness's testimony is not challenged. You may reject it because of the witness's bearing or demeanor,
20 or because of the inherent improbability of the testimony, or for other reasons sufficient for you to
21 conclude that the testimony is not worthy of belief.

22 In evaluating the credibility of the witnesses, you should take into account any evidence that a
23 witness may benefit in some way from the outcome of the case. Such an interest in the outcome creates

1 a motive to testify falsely and may sway a witness to testify in a way that advances his or her own
2 interests. Therefore, if you find that any witness whose testimony you are considering may have an
3 interest in the outcome of this trial, you should bear that factor in mind when evaluating the credibility
4 of his or her testimony and decide whether to accept it with great care.

5 Keep in mind, though, that it does not automatically follow that testimony given by an interested
6 witness is to be disbelieved. There are many people who, no matter what their interest in the outcome of
7 the case may be, would not testify falsely. It is for you to decide, based on your own perceptions and
8 common sense, to what extent, if at all, the witness's interest has affected his or her testimony.

9
10 Expert Witnesses

11 You have heard testimony from an expert witness. As I previously explained, an expert witness
12 is someone who, by education or experience, has acquired learning or experience in a specialized area of
13 knowledge. Such a witness is permitted to express his opinions on matters about which he has
14 specialized knowledge and training. The parties may present expert testimony to you on the theory that
15 someone who is experienced in the field can assist you in understanding the evidence or in reaching an
16 independent decision on the facts.

17 Your role in judging credibility applies to the expert as well as other witnesses. In weighing an
18 expert's opinion, you may consider the expert's qualifications, education, and reasons for testifying, as
19 well as all of the other considerations that ordinarily apply, including all the other evidence in the case.
20 If you find the opinion of an expert is based on sufficient data, education, and experience, and the other
21 evidence does not give you reason to doubt his conclusions, you would be justified in placing reliance
22 on his testimony. However, you should not accept witness testimony simply because the witness is an
23 expert. The determination of the facts in this case rests solely with you.

1 Law Enforcement and Government Witnesses

2 You have heard testimony from law enforcement or other government witnesses. The fact that a
3 witness may be employed as a law enforcement official or government employee does not mean that his
4 or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than
5 that of an ordinary witness. It is your decision, after reviewing all the evidence, whether to accept the
6 testimony of any law enforcement witness or government witnesses, as it is with every other type of
7 witness, and to give to that testimony the weight you find it deserves.

8
9 Preparation and Representation of Witnesses

10 You have heard evidence during the trial that witnesses have discussed the facts of the case and
11 their testimony with the lawyers before the witnesses appeared in court. You have also heard evidence
12 that some of the witnesses have lawyers of their own. Although you may consider these facts when you
13 are evaluating a witness's credibility, it is common for a witness to meet with lawyers before testifying
14 so that the witness can be aware of the subjects he or she will be questioned about, focus on the subjects,
15 and have the opportunity to review relevant exhibits before being questioned about them. In fact, it
16 would be unusual for a lawyer to call a witness without such consultation. Additionally, it is not unusual
17 for a witness in a criminal case to have a lawyer of his or her own. As always, the weight you give to
18 the fact or the nature of these issues and what inferences you draw from them are matters completely
19 within your discretion.

20 Adapted from *United States v. Avenatti*, 19-cr-374 (JMF) (S.D.N.Y. February 1, 2022).

1 Uncalled Witnesses

2 There are people whose names you have heard during the course of the trial but who did not
3 appear here to testify. I instruct you that each party had an equal opportunity, or lack of opportunity, to
4 call any of these witnesses. Therefore, you should not draw any inferences or reach any conclusions as
5 to what they would have testified to had they been called. Their absence should not affect your
6 judgment in any way.

7 You should, however, remember my instruction that the law does not impose on a defendant in a
8 criminal case the burden or duty of calling any witness or producing any evidence. The burden of proof
9 remains at all times with the Government.

10
11 Number of Witnesses and Uncontradicted Testimony

12 The fact that one party called more witnesses or introduced more evidence does not mean that
13 you should necessarily find the facts in favor of the side offering the most witnesses and the most
14 evidence. By the same token, you do not have to accept the testimony of any witness who has not been
15 contradicted or impeached, if you find the witness to be not credible. After examining all the evidence,
16 you may decide that the party calling the most witnesses has not persuaded you because you do not
17 believe its witnesses, or because you do believe the fewer witnesses called by the other side.

18 Again, you should also keep in mind that the burden of proof is always on the Government. The
19 defendant is not required to call any witnesses or offer any evidence, since he is presumed to be
20 innocent. On the other hand, the Government is not required to prove each element of the offense by
21 any particular number of witnesses. The testimony of a single witness may be enough to convince you
22 beyond a reasonable doubt of the existence of the elements of the charged offenses — if you believe that
23 the witness has truthfully and accurately related what he or she has told you. The testimony of a single

witness may also be enough to convince you that reasonable doubt exists, in which case you must find the defendant not guilty.

Stipulations

Stipulations were entered into relating to various facts in this case. A stipulation is an agreement between parties as to what certain facts were or what the testimony would be if certain people testified before you. The stipulations are the same for your purposes as the presentation of live testimony. You should consider the weight to be given such evidence just as you would any other evidence.

Limited Purpose Evidence

If certain testimony or evidence was received for a limited purpose, you must follow the limiting instructions I have given.

Charts and Summaries

The parties presented exhibits in the form of charts and summaries. As I mentioned to you earlier, I admitted these charts and summaries in place of, or in addition to, the underlying testimony or documents that they represent in order to save time and avoid unnecessary inconvenience. They are no better than the testimony or the documents upon which they are based. Therefore, you are to give no greater consideration to these charts or summaries than you would give to the evidence upon which they are based. It is for you to decide whether they correctly present the information contained in the testimony and in the exhibits on which they were based.

1 Particular Investigative Techniques

2 You have heard reference to certain investigative techniques that were used or not used by the
3 Government in this case. There is no legal requirement that the Government prove its case through any
4 particular means. While you are to carefully consider the evidence and/or lack of evidence adduced by
5 the Government, you are not to speculate as to why the Government used the techniques it did or why it
6 did not use other techniques. Your concern is to determine whether or not, on the evidence or lack of
7 evidence, the Government has met its burden of proving each element of each charge beyond a
8 reasonable doubt.

9
10 Persons Not on Trial

11 You may not draw any inference, favorable or unfavorable, toward the Government or the
12 defendant from the fact that any person was not named as a defendant in this case, and you may not
13 speculate as to the reasons why other people are not on trial before you now. Those matters are wholly
14 outside your concern and have no bearing on your function as jurors in deciding the case before you.

15
16 All Available Evidence Need Not Be Introduced

17 The law does not require any party to call as witnesses all persons who may have been present at
18 any time or place involved in the case, or who may appear to have some knowledge of the matter in
19 issue at this trial. Nor does the law require any party to produce as exhibits all relevant papers and
20 things available to either party during the course of the trial.

1 Searches and Seizures

2 You have heard testimony about evidence that was seized and about searches, including searches
3 of electronic devices. Evidence obtained from those searches was properly admitted in this case and
4 may be properly considered by you. Indeed, such searches are entirely appropriate law enforcement
5 actions. Whether you approve or disapprove of how the evidence was obtained should not enter into
6 your deliberations because I instruct you that the Government's use of the evidence is lawful.

7 You must, therefore, regardless of your personal opinions, give this evidence full consideration
8 along with all the other evidence in the case in determining whether the Government has proved the
9 defendant's guilt beyond a reasonable doubt. Once again, however, it is for you to decide what weight,
10 if any, to give to this evidence.

11
12 The Defendant's Testimony

13 The defendant did not testify. Under our Constitution, a defendant is presumed innocent and has
14 no obligation to testify or to present any other evidence because, as I have told you many times, it is the
15 Government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains on
16 the Government throughout the entire trial and never shifts to the defendant. A defendant is never
17 required to prove that he is innocent.

18 You may not attach any significance to the fact that the defendant did not testify. No adverse
19 inference against the defendant may be drawn by you because the defendant did not take the witness
20 stand. You may not speculate as to why he did not testify. You may not consider this in any way in
21 your deliberations in the jury room.

1 II. SUBSTANTIVE CHARGES

2 That concludes my introductory instructions. Let me now turn to the charges.

3 The Indictment

4 The defendant is formally charged in an Indictment. As I instructed you at the outset of this
5 case, the Indictment is simply a charge or accusation. It is not evidence.

6 The Indictment contains two charges, or “counts,” against Nathaniel Chastain. Each count
7 accuses the defendant of committing a different crime and I will discuss each count in turn. You must,
8 as a matter of law, consider each count, and you must return a separate verdict for each count in which
9 the defendant is charged. A verdict of not guilty on Count One, however, requires that you return a
10 count of not guilty for Count Two. If you should, however, find the defendant guilty on Count One, you
11 are not required to find him guilty on Count Two.

12 Count One charges the defendant with wire fraud. Specifically, it charges that, from at least in or
13 about June 2021 to at least in or about September 2021, the defendant misappropriated OpenSea’s
14 confidential business information by purchasing NFTs that he knew were going to be featured on
15 OpenSea’s homepage and then reselling them after they had been featured and appreciated in value.

16 Count Two charges the defendant with concealment money laundering. Specifically, it charges
17 that, from at least in or about June 2021 to at least in or about September 2021, the defendant conducted
18 financial transactions involving the proceeds of the wire fraud charged in Count One in a manner that
19 was designed to conceal the nature, location, source, ownership, or control of the proceeds.

20 I remind you that whatever opinions or understandings you may have about terms that you may
21 have heard during trial, including “fraud,” “confidential business information,” “money laundering,” or
22 “insider trading,” you should disregard them. I will explain the elements that the Government must

prove beyond a reasonable doubt for you to find the defendant guilty of each crime with which he is charged, namely wire fraud and money laundering, and it is my instructions you should follow.

Adapted from *United States v. Raji*, 19-CR-870 (JMF) (S.D.N.Y. September 19, 2022); *United States v. Avenatti*, 19-cr-374 (JMF) (S.D.N.Y. February 1, 2022); *United States v. Ansah*, 19 Cr. 752 (JMF) (S.D.N.Y. 2021); *United States v. Castillo*, 19 Cr. 784 (GHW) (S.D.N.Y. 2021); *United States v. Cheng Le*, 15 Cr. 38 (AJN) (S.D.N.Y. 2015); *United States v. Balkany*, 10 Cr. 441 (DLC) (S.D.N.Y. 2010); Sand, *Model Federal Jury Instructions-Criminal*, Instrs. 39A.50, 44.01.

Count One: Elements

In order to find the defendant guilty of Count One, which charges him with wire fraud, the Government must prove the following three elements beyond a reasonable doubt:

First, that there was a scheme or artifice to defraud OpenSea of its property — specifically, its confidential business information;

Second, that the defendant knowingly, willfully, and with the intent to defraud, devised or participated in the scheme or artifice; and

Third, that an interstate or international wire communication was used in furtherance of the scheme or artifice.

I will discuss each element in turn.

Adapted from *United States v. Raji*, 19-CR-870 (JMF) (S.D.N.Y. September 19, 2022); *United States v. Avenatti*, 19-cr-374 (JMF) (S.D.N.Y. February 1, 2022); *United States v. Lavidas*, 19 Cr. 716 (DLC) (S.D.N.Y. 2020); *United States v. Hoey*, 15 Cr. 229 (PAE) (S.D.N.Y. 2016); *United States v. Balkany*, 10 Cr. 441 (DLC) (S.D.N.Y. 2010); Sand, *Model Federal Jury Instructions-Criminal*,

Instrs. 44-3; see *United States v. Calderon*, 944 F.3d 72, 85 (2d Cir. 2019); *United States v. Weaver*, 860 F.3d 90, 94 (2d. Cir. 2017).

Count One — First Element: Existence of a Scheme or Artifice

The first element the Government must prove beyond a reasonable doubt with respect to Count One is that there was a scheme or artifice to defraud OpenSea of its property — specifically, its confidential business information. Note that Count One charges the defendant with defrauding OpenSea; he is not charged with defrauding any parties other than OpenSea, such as NFT collectors, artists, or members of OpenSea’s user base.

A “scheme or artifice” is merely a plan for the accomplishment of an object. A “scheme to defraud” exists when an individual engages in any plan, device, or course of action to accomplish a fraudulent objective.

“Fraud” is a general term that includes all efforts and means that an individual may devise to deprive another of money or property by trick, deception, swindle, or overreaching. In order to establish a scheme to defraud, the Government need not show that the defendant made a misrepresentation. You may find the existence of a scheme to defraud if you find that the conduct of the defendant was deceptive or if you find that the defendant conducted himself in a manner that departed from traditional notions of fundamental honesty and fair play in the general and business life of society. As is pertinent here, a “scheme to defraud” includes fraudulently embezzling or fraudulently misappropriating property belonging to another. The word “misappropriate” refers to the fraudulent appropriation of property by a person to whom such property has been entrusted. A person commits “misappropriation” when he fraudulently converts to his own use property belonging to another where the property initially lawfully came within his possession or control.

1 As is pertinent here, a “scheme to defraud” includes fraudulently misappropriating property
2 belonging to another. A “scheme to defraud” must have some amount of money or property as its
3 object. The amount need not be large; any amount suffices.

4 A company’s “confidential business information” is a type of property. Information is
5 “confidential business information” if it was acquired or created by a business for a business purpose,
6 and the business both considered and treated that information in a way that maintained the company’s
7 exclusive right to that information. The company must both consider the information to be confidential
8 and take affirmative steps to treat the information as confidential and maintain exclusivity; if an
9 employer “considers” information to be confidential but does not take affirmative steps to treat it as such
10 and maintain exclusivity, it does not qualify as property. Factors you may consider in determining
11 whether OpenSea treated the information at issue as confidential include, but are not limited to: written
12 company policies, employee training, measures the employer has taken to guard the information’s
13 secrecy, the extent to which the information is known outside the employer’s place of business, and the
14 ways in which other employees may access and use the information. You may also consider whether the
15 information had economic value to the employer, but the Government is not required to prove that the
16 information had such value.

17 Nor is it necessary for the Government to prove that the defendant actually realized any gain
18 from the scheme or that the intended victim actually suffered any loss. You must concentrate on
19 whether there was a scheme or artifice, not on the consequences of the scheme or artifice. Of course,
20 proof concerning the accomplishment of the goals of a scheme or artifice may be the most persuasive
21 evidence of the existence of the scheme or artifice itself.

22 A scheme to defraud need not be shown by direct evidence, but may be established by all of the
23 circumstances and facts in the case.

Adapted from *United States v. Mahaffy*, 693 F.3d 113, 138 n.14 (2d Cir. 2012); *United States v. Chastain*, No. 22-CR-305 (JMF), 2022 WL 13833637, at *1 (S.D.N.Y. Oct. 21, 2022); *United States v. Males*, 459 F.3d 154, 157 (2d Cir. 2006); *United States v. Tagliaferri*, 13 Cr. 115 (S.D.N.Y. 2014); *United States v. Trapilo*, 130 F.3d 547, 550 n.3 (2d Cir. 1997); *United States v. Raji*, 19-CR-870 (JMF) (S.D.N.Y. September 19, 2022); *United States v. Avenatti*, 19-cr-374 (JMF) (S.D.N.Y. February 1, 2022); *United States v. Balkany*, 10 Cr. 441 (DLC) (S.D.N.Y. 2010); *United States v. Hoey*, 15 Cr. 229 (PAE) (S.D.N.Y. 2016); Sand, *Model Federal Jury Instructions-Criminal*, Instrs. 44-4.

Count One — Second Element: Knowledge and Intent to Defraud

The second element that the Government must establish beyond a reasonable doubt for purposes of Count One is that the defendant devised or participated in the fraudulent scheme knowingly, willfully, and with the specific intent to defraud. It is not enough for you to find that the defendant violated one or more of his professional duties or an employment policy; an employee can violate his professional duties or an employment policy without having an intent to defraud.

To “devise” a scheme to defraud is to concoct or plan it. To “participate” in a scheme to defraud means to associate oneself with it, with the intent to make it succeed.

“Knowingly” means to act voluntarily and deliberately, rather than mistakenly or inadvertently.

“Willfully” means to act voluntarily and with a wrongful purpose.

“Intent to defraud” means to act knowingly and with the specific intent to deceive, for the purpose of causing some financial or property loss to another. Thus, the defendant acted with intent to defraud in the context of wire fraud if he engaged or participated in the fraudulent scheme with awareness of its fraudulent or deceptive character, with an intention to be involved in the scheme to

defraud and to help it succeed, and with a purpose of obtaining money or property from the victim. That is, the Government must prove beyond a reasonable doubt that the defendant contemplated some actual harm or injury to a victim with respect to the victim's money or property. But the Government does not need to prove that the intended victim was actually harmed; only that the defendant intended to harm the victim by obtaining money or property. The Government is also not required to prove that the defendant realized any gain from the scheme, although you may consider any gain the defendant realized in determining whether the defendant participated in the scheme.

Since an essential element of wire fraud is intent to defraud, it follows that good faith on the part of the defendant is a complete defense to a charge of wire fraud. A defendant, however, has no burden to establish a defense of good faith. The burden is on the Government to prove fraudulent intent and the consequent lack of good faith beyond a reasonable doubt. If the defendant participated in the scheme to defraud, then a belief by the defendant, if such belief existed, that ultimately everything would work out so that no one would lose any money does not mean that the defendant acted in good faith.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required. Instead, the ultimate facts of knowledge and intent, though subjective, may be established by circumstantial evidence, based upon a person's words, his conduct, his acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.

Adapted from *United States v. Raji*, 19-CR-870 (JMF) (S.D.N.Y. September 19, 2022); *United States v. Avenatti*, 19-cr-374 (JMF) (S.D.N.Y. February 1, 2022); *United States v. Lavidas*, 19 Cr. 716 (DLC) (S.D.N.Y. 2020); *United States v. Hoey*, 15 Cr. 229 (PAE) (S.D.N.Y. 2016); *United States v. Balkany*, 10 Cr. 441 (DLC) (S.D.N.Y. 2010); *United States v. Males*, 459 F.3d 154, 159 (2d Cir.

2006); *United States v. Rossomando*, 144 F.3d 197, 203 (2d Cir. 1998); *United States v. Middendorf*,
 18 Cr. 36 (JPO), 2019 WL 4254025, at &7 (S.D.N.Y. Sept. 9, 2019); Sand, *Model Federal Jury*
Instructions-Criminal, Instrs. 44-5.

Count One — Third Element: Use of Wires

The third and final element that the Government must establish beyond a reasonable doubt with respect to Count One is that an interstate wire was used in furtherance of the scheme to defraud, within the period of the scheme charged in Count One. In this case, the parties have stipulated, or agreed, that this interstate wire element is met.

Adapted from *United States v. Raji*, 19-CR-870 (JMF) (S.D.N.Y. September 19, 2022); *United States v. Avenatti*, 19-cr-374 (JMF) (S.D.N.Y. February 1, 2022); *United States v. Lavidas*, 19 Cr. 716 (DLC) (S.D.N.Y. 2020); *United States v. Balkany*, 10 Cr. 441 (DLC) (S.D.N.Y. 2010); see *United States v. Halloran*, 821 F.3d 321, 342 (2d Cir. 2016).

Count Two: Elements

With that, I'll turn to Count Two, which charges the defendant with concealment money laundering. Concealment money laundering occurs when a defendant conducts a financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the proceeds of specified unlawful activity — here, the wire fraud charged in Count One.

In order to find the defendant guilty of Count Two, the Government must prove the following four elements beyond a reasonable doubt:

First, that the defendant conducted (or attempted to conduct) a “financial transaction,” which must in some way or degree have affected interstate commerce;

1 *Second*, that the financial transaction at issue involved the proceeds of specified unlawful
2 activity, namely the wire fraud charged in Count One of the Indictment;

3 *Third*, that the defendant knew that the financial transaction involved the proceeds of some form
4 of unlawful activity; and

5 *Fourth*, that the defendant knew that the transaction was designed to conceal or disguise the
6 nature, location, source, ownership, or control of the proceeds of wire fraud.

7 I will discuss each element in turn.

8 **Adapted from *United States v. Wedd*, 15 Cr. 616 (KBF) (S.D.N.Y. 2017)**

9
10 **Count Two — First Element: Financial Transaction**

11 The first element the Government must prove beyond a reasonable doubt with respect to Count
12 Two is that the defendant conducted a financial transaction.

13 The term “conducted” includes initiating, concluding, or participating in initiating or concluding
14 a transaction.

15 The term “financial transaction” includes any transaction that involves the movement of funds by
16 wire or other means and in any way or degree affects interstate commerce.

17 The term “funds” includes any currency, money, or other medium of exchange that can be used
18 to pay for goods and services, including digital or cryptocurrency.

19 Interstate commerce includes any transmission, transfer, or transportation between persons,
20 places, or entities located in one state (including the District of Columbia) and persons, places, or
21 entities located in another state, regardless of whether done for a business purpose or otherwise. The
22 involvement in interstate commerce can be minimal; any involvement at all will satisfy this element.

1 You do not have to decide whether the effect on interstate commerce was harmful or beneficial
2 to a particular business or to commerce in general. The Government satisfies its burden of proving an
3 effect on interstate commerce if it proves beyond a reasonable doubt any effect, whether it was harmful
4 or not.

5 In addition, it is not necessary for the Government to show that a defendant actually intended or
6 anticipated an effect on interstate commerce by his actions or that commerce was actually affected. All
7 that is necessary is that the natural and probable consequences of the acts the defendant agreed to take
8 would affect interstate commerce.

9 **Adapted from *United States v. Wedd*, 15 Cr. 616 (KBF) (S.D.N.Y. 2017)**

10
11 **Count Two — Second Element: Specified Unlawful Activity**

12 The second element that the Government must establish beyond a reasonable doubt for purposes
13 of Count Two is that the financial transactions involved the proceeds of “specified” unlawful activity.
14 Here, the “specified” unlawful activity is the wire fraud as charged in Count One. I instruct you, as a
15 matter of law, that the term “specified unlawful activity” includes wire fraud.

16 The term “proceeds” means any property, or any interest in property, that someone acquires or
17 retains as profits resulting from the commission of the specified unlawful activity.

18 **Adapted from *United States v. Wedd*, 15 Cr. 616 (KBF) (S.D.N.Y. 2017)**

19
20 **Count Two — Third Element: Knowledge**

21 The third element that the Government must establish beyond a reasonable doubt for purposes of
22 Count Two is that the defendant knew that the financial transactions at issue involved the proceeds of
23 some form, though not necessarily which form, of unlawful activity.

1 If you find beyond a reasonable doubt that the defendant committed the wire fraud offense I have
 2 instructed you on in Count One, and he knew that the proceeds came from that activity, that is sufficient
 3 for you to find that the defendant believed that the proceeds came from unlawful activity.

4 **Adapted from *United States v. Wedd*, 15 Cr. 616 (KBF) (S.D.N.Y. 2017)**

5
 6 **Count Two — Fourth Element: Purpose**

7 The fourth and final element that the Government must establish beyond a reasonable doubt for
 8 purposes of Count Two concerns the purpose of the transaction. Specifically, the Government must
 9 prove beyond a reasonable doubt that the defendant conducted financial transactions with knowledge
 10 that the transactions were designed in whole or in part to conceal or disguise the nature, location, source,
 11 ownership, or control of the proceeds of the specified unlawful activity.

12 As I have previously instructed, to act knowingly means to act purposely and voluntarily and not
 13 because of a mistake, accident, or other innocent reason. That is, the acts must be the product of the
 14 defendant's conscious objective. To prove that an act is done knowingly, the Government is not
 15 required to prove that the defendant knew that his acts were unlawful.

16 If you find that the evidence establishes beyond a reasonable doubt that the defendant knew of
 17 the purpose of the particular transaction in issue and that he knew that the transaction was either
 18 designed to conceal or disguise the true origin or the property in question, then this element is satisfied.
 19 However, if you find that the defendant knew of the transaction, but did not know that it was either
 20 designed to conceal or disguise the true origin of the property in question, but instead thought that the
 21 transaction was intended to further the innocent transaction, you must find that this element has not been
 22 satisfied and find the defendant not guilty.

1 Intent to disguise or conceal the true origin of the property need not be the sole motivating factor,
2 and the Government need not prove with regard to any single transaction that the defendant removed all
3 trace of his involvement with the money or property.

4 **Adapted from *United States v. Wedd*, 15 Cr. 616 (KBF) (S.D.N.Y. 2017)**

5
6 **Defense Theory of the Case**

7 With respect to Count One, which charges the defendant with wire fraud, the defense contends
8 the information allegedly used by the defendant in engaging in the NFT trades at issue was not
9 OpenSea's "property" because (1) the information was not valuable confidential business information
10 and (2) was not treated as such by OpenSea. The defense also contends that the defendant did not intend
11 to defraud or harm OpenSea and did not willfully disobey any law.

12 With respect to Count Two, which charges the defendant with money laundering, the defense
13 contends that the defendant did not believe any proceeds came from unlawful activity and that he acted
14 lawfully in transferring cryptocurrency involved in any NFT transactions between two cryptocurrency
15 wallets, an online "hot" wallet and a "cold" wallet or storage device. The defense contends that the
16 defendant's movement of cryptocurrency was consistent with that of a typical lawful cryptocurrency
17 user. The defense additionally contends that the defendant could not have acted to conceal his
18 transactions in light of the fact that all of the transactions at issue were carried out on a publicly
19 viewable blockchain, known as the Ethereum blockchain.

20 **Adapted from Defendant's Request to Charge**

21
22 **Venue**

1 In addition to all of the elements that I have described for you, in order to convict the defendant
2 of each count in the Indictment, you must separately decide whether venue is proper in the Southern
3 District of New York — that is, whether an act in furtherance of each alleged crime occurred within this
4 District. In this case, the parties have stipulated, or agreed, that venue is proper in the Southern District
5 of New York with respect to the charges in both Count One and Count Two.

6
7 Variance in Dates

8 It does not matter if the evidence you heard at trial indicates that a particular act occurred on a
9 different date. The law requires only a substantial similarity between the dates alleged in the Indictment
10 and the dates established by the evidence.

11
12 III. CONCLUDING INSTRUCTIONS

13 Selection of the Foreperson

14 In a few minutes, you are going to go into the jury room and begin your deliberations. Your first
15 task will be to select a foreperson. The foreperson has no greater voice or authority than any other juror
16 but is the person who will communicate with me when questions arise and when you have reached a
17 verdict and who will be asked in open court to pass your completed Verdict Form to me. Notes should
18 be signed by the foreperson and should include the date and time they were sent. They should also be as
19 clear and precise as possible. Any notes from the jury will become part of the record in this case. So
20 please be as clear and specific as you can be in any notes that you send. Do not tell me or anyone else
21 how the jury stands on any issue until after a unanimous verdict is reached.

1 Right to See Exhibits and Hear Testimony

2 All of the exhibits will be given to you near the start of deliberations. In addition, you will also
3 be provided with a list of all the exhibits that were received into evidence.

4 If you prefer to view any evidence here in the courtroom or if you want any of the testimony
5 submitted to you or read back to you, you may also request that. Keep in mind that if you ask for
6 testimony, however, the court reporter must search through her notes, the parties must agree on what
7 portions of testimony may be called for, and if they disagree, I must resolve those disagreements. That
8 can be a time-consuming process. So please try to be as specific as you possibly can in requesting
9 portions of the testimony, if you do.

10 Again, your requests for testimony — in fact, any communication with the Court — should be
11 made to me in writing, signed by your foreperson with the date and time, and given to one of the Court
12 Security Officers.

13
14 Juror Note-Taking

15 If any one of you took notes during the course of the trial, you should not show your notes to, or
16 discuss your notes with, any other jurors during your deliberations. Any notes you have taken are to be
17 used solely to assist you. The fact that a particular juror has taken notes entitles that juror's views to no
18 greater weight than those of any other juror. Finally, your notes are not to substitute for your
19 recollection of the evidence in the case. If, during your deliberations, you have any doubt as to any of
20 the testimony, you may — as I just told you — request that the official trial transcript that has been
21 made of these proceedings be submitted or read back to you.

1 Bias, Prejudice, and Sympathy

2 All of us, no matter how hard we try, tend to look at others and weigh what they have to say
3 through the lens of our own experience and background. We each have a tendency to stereotype others
4 and make assumptions about them. Often, we see life and evaluate evidence through a clouded filter
5 that tends to favor those like ourselves. You must do the best you can to put aside such stereotypes, for
6 all litigants and witnesses are entitled to a level playing field.

7 In particular, it would be improper for you to consider, in reaching your decision as to whether
8 the Government sustained its burden of proof, any personal feelings you may have about the defendant's
9 race, religion, national-origin, gender, sexual orientation, or age. Similarly, it would be improper for
10 you to consider any personal feelings you may have about the race, religion, national, origin, gender,
11 sexual orientation, or age of any witness or anyone else involved in this case

12 Indeed, under your oath as jurors, you are not to be swayed by bias, prejudice, or sympathy. You
13 are to be guided solely by the evidence in this case, and as you sift through the evidence, the crucial
14 question that you must ask yourselves for each count is: Has the Government proved each element of
15 each count beyond a reasonable doubt?

16 It is for you and you alone to decide whether the Government has sustained its burden of proving
17 the defendant's guilt beyond a reasonable doubt, solely on the basis of the evidence or lack of evidence
18 and subject to the law as I have instructed you.

19 It must be clear to you that once you let prejudice, bias, or sympathy interfere with your thinking,
20 there is a risk that you will not arrive at a true and just verdict.

21 If you have a reasonable doubt as to the defendant's guilt with respect to a particular count, then
22 you must render a verdict of not guilty on that particular count. On the other hand, if you should find
23 that the Government has met its burden of proving the guilt of the defendant beyond a reasonable doubt

1 with respect to a particular count, then you should not hesitate because of sympathy or any other reason
2 to render a verdict of guilty on that count.

3 I also caution you that, under your oath as jurors, you cannot allow to enter into your
4 deliberations any consideration of the punishment that may be imposed upon the defendant if he is
5 convicted. The duty of imposing a sentence in the event of conviction rests exclusively with the Court,
6 and the issue of punishment may not affect your deliberations as to whether the Government has proved
7 the defendant's guilt beyond a reasonable doubt.

8
9 Duty to Deliberate

10 The most important part of this case, members of the jury, is the part that you as jurors are now
11 about to play as you deliberate on the issues of fact. I know you will try the issues that have been
12 presented to you according to the oath that you have taken as jurors. In that oath you promised that you
13 would well and truly try the issues joined in this case and a true verdict render.

14 As you deliberate, please listen to the opinions of your fellow jurors, and ask for an opportunity
15 to express your own views. Every juror should be heard. No one juror should hold the center stage in
16 the jury room and no one juror should control or monopolize the deliberations. If, after listening to your
17 fellow jurors and if, after stating your own view, you become convinced that your view is wrong, do not
18 hesitate because of stubbornness or pride to change your view. On the other hand, do not surrender your
19 honest beliefs solely because of the opinions of your fellow jurors or because you are outnumbered.

20 Your verdict must be unanimous. If at any time you are not in agreement, you are instructed that
21 you are not to reveal the standing of the jurors, that is, the split of the vote, to anyone, including me, at
22 any time during your deliberations.

1 Return of the Verdict

2 We have prepared a Verdict Form for you to use in recording your decisions, a copy of which is
3 attached to these instructions. Do not write on your individual copies of the Verdict Form. My staff
4 will give the official Verdict Form to Juror Number One, who should give it to the foreperson after the
5 foreperson has been selected.

6 You should draw no inference from the questions on the Verdict Form as to what your verdict
7 should be. The questions are not to be taken as any indication that I have any opinion as to how they
8 should be answered.

9 After you have reached a verdict, the foreperson should fill in the Verdict Form and note the date
10 and time, and you should all sign the Verdict Form. The foreperson should then give a note — **not** the
11 Verdict Form itself — to the Court Security Officer outside your door stating that you have reached a
12 verdict. Do not specify what the verdict is in your note. Instead, the foreperson should retain the
13 Verdict Form and hand it to me in open court when I ask for it.

14 I will stress again that each of you must be in agreement with the verdict that is announced in
15 court. Once your verdict is announced in open court and officially recorded, it cannot ordinarily be
16 revoked.

17
18 Closing Comments

19 Finally, I say this, not because I think it is necessary, but because it is the custom in this
20 courthouse to say it: You should treat each other with courtesy and respect during your deliberations.

21 All litigants stand equal in this room. All litigants stand equal before the bar of justice. All
22 litigants stand equal before you. Your duty is to decide between these parties fairly and impartially, and
23 to see that justice is done.

1 Under your oath as jurors, you are not to be swayed by sympathy or prejudice. You should be
2 guided solely by the evidence presented during the trial and the law as I gave it to you, without regard to
3 the consequences of your decision. You have been chosen to try the issues of fact and to reach a verdict
4 on the basis of the evidence or lack of evidence. If you let sympathy or prejudice interfere with your
5 clear thinking, there is a risk that you will not arrive at a just verdict. You must make a fair and
6 impartial decision so that you will arrive at the just verdict.

7 Members of the jury, I ask your patience for a few moments longer. It is necessary for me to
8 spend a few moments with the lawyers and the court reporter at the side bar. I will ask you to remain
9 patiently in the jury box, without speaking to each other, and we will return in just a moment to submit
10 the case to you. Thank you.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

NATHANIEL CHASTAIN,

Defendant.

X

:

:

:

:

:

:

:

:

X

22-CR-305 (JMF)

VERDICT FORM

All Answers Must Be Unanimous

Count One – Wire Fraud

Guilty _____ Not Guilty _____

***REMINDER: If you find the defendant Not Guilty on Count One,
you must find him Not Guilty on Count Two as well.***

Count Two – Money Laundering

Guilty _____ Not Guilty _____

Please Turn to the Next Page

After completing the Verdict Form, please sign your names in the spaces provided below, fill in the date and time, and inform the Court Security Officer that you have reached a verdict.

Foreperson

Date and Time: _____

Once you have signed the Verdict Form, please give a note — NOT the Verdict Form itself — to the Court Security Officer stating that you have reached a verdict.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA, :
:
-v- :
:
NATHANIEL CHASTAIN, :
:
Defendant. :
:
-----X

22-CR-305 (JMF)

JURY CHARGE

May 1, 2023

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41	

1 I. GENERAL INTRODUCTORY CHARGES

2 Members of the jury, you have now heard all of the evidence and the lawyers' closing
3 arguments. It is my duty at this point to instruct you as to the law. I am going to read my instructions to
4 you. It is not my favorite way to communicate — and not the most scintillating thing to listen to — but
5 there is a need for precision, and it is important that I get the words just right, and so that is why I will be
6 reading.

7 I have given you a copy of my instructions to follow along because they cover many points.
8 Please limit yourself to following along; that is, do *not* read ahead in the instructions. If you find it
9 easier to listen and understand while you are following along with me, please do so. If you would
10 prefer, you can just listen and not follow along. In the unlikely event that I deviate from the written
11 instructions, it is my oral instructions that govern and that you must follow. But you may take your
12 copy of the instructions with you into the jury room so you can consult it if you want to re-read any
13 portion of the charge to facilitate your deliberations.

14 For now, listen carefully and try to concentrate on the substance of what I'm saying. You should
15 not single out any instruction as alone stating the law. Instead, you should consider my instructions as a
16 whole when you retire to deliberate in the jury room.

17 My instructions to you will be in three parts.

18 First, I will give you general instructions — for example, about your role as the jury, what you
19 can and cannot consider in your deliberations, and the burden of proof.

20 Second, I will describe the law that you must apply to the facts as you find them to be established
21 by the evidence.

22 Finally, I will give you some instructions for your deliberations.
23

1 Role of the Court and the Jury

2 You, the members of the jury, are the sole and exclusive judges of the facts. You must weigh
3 and consider the evidence without regard to sympathy, prejudice, or passion for or against any party. It
4 is your duty to accept my instructions as to the law and to apply them to the facts as you determine them.
5 If either party has stated a legal principle differently from any that I state to you in my instructions, it is
6 my instructions that you must follow.

7
8 The Parties

9 In reaching your verdict, you must remember that all parties stand equal before a jury in the
10 courts of the United States. The fact that the Government is a party and the prosecution is brought in the
11 name of the United States does not entitle the Government or its witnesses to any greater consideration
12 than that accorded to any other party. By the same token, you must give it no less deference. The
13 Government and the defendant, Nathaniel Chastain, stand on equal footing before you.

14 It would be improper for you to consider, in reaching your decision as to whether the
15 Government sustained its burden of proof, any personal feelings you may have about the defendant's
16 race, national origin, religious beliefs, sex, or age. All persons are entitled to the same presumption of
17 innocence and the Government has the same burden of proof with respect to all persons.

18
19 Conduct of Counsel

20 The personalities and the conduct of counsel are not in any way at issue. If you formed opinions
21 of any kind about any of the lawyers in the case, favorable or unfavorable, whether you approved or
22 disapproved of their behavior, those opinions should not enter into your deliberations.

1 In addition, remember that it is the duty of a lawyer to object when the other side offers
2 testimony or other evidence that the lawyer believes is not properly admissible. Therefore, you should
3 draw no inference from the fact that there was an objection to any testimony or evidence. Nor should
4 you draw any inference related to the weight or importance of any testimony or evidence from the fact
5 that I sustained or overruled an objection. Simply because I have permitted certain testimony or
6 evidence to be introduced does not mean that I have decided on its importance or significance. That is
7 for you to decide.

8 9 Presumption of Innocence and Burden of Proof

10 The defendant has pleaded not guilty to the charges against him. As a result of that plea of not
11 guilty, the burden is on the Government to prove guilt beyond a reasonable doubt. This burden never
12 shifts to a defendant for the simple reason that the law never imposes upon a defendant in a criminal
13 case the burden or duty of testifying, or calling any witness, or locating or producing any evidence. The
14 fact that the defendant presented evidence does not shift the burden to him.

15 Furthermore, the law presumes the defendant to be innocent of the charges against him. The
16 presumption of innocence was in his favor when the trial began, continued in his favor throughout the
17 entire trial, remains with him even as I speak to you now, and persists in his favor as to each charged
18 crime during the course of your deliberations in the jury room, unless and until you determine that the
19 Government proves beyond a reasonable doubt that he committed the charged crime.

20 21 Proof Beyond a Reasonable Doubt

22 The question that naturally arises is, "What is a reasonable doubt?" A reasonable doubt is a
23 doubt based on your reason, your judgment, your experience, and your common sense. It is a doubt that

1 a reasonable person has after carefully weighing all the evidence. It is a doubt founded in reason and
2 arising out of the evidence in the case — or the lack of evidence. A reasonable doubt is not caprice or
3 whim. It is not speculation or suspicion.

4 Proof beyond a *reasonable* doubt does not mean proof beyond all *possible* doubt. It is
5 practically impossible for a person to be absolutely and completely convinced of any disputed fact that,
6 by its very nature, cannot be proved with mathematical certainty. The Government's burden is to
7 establish guilt beyond a *reasonable* doubt, not all *possible* doubt.

8 If, after a fair and impartial consideration of all the evidence, you can candidly and honestly say
9 that you are not satisfied with the guilt of the defendant, that you do not have an abiding belief of the
10 defendant's guilt — in other words, if you have such a doubt as would reasonably cause a prudent
11 person to hesitate in acting in matters of importance in his or her own affairs — then you have a
12 reasonable doubt, and in that circumstance it is your duty to acquit.

13 On the other hand, if, after a fair and impartial consideration of all the evidence, you can
14 candidly and honestly say that you do have an abiding belief of the defendant's guilt, such a belief as a
15 prudent person would be willing to act upon in important matters in the personal affairs of his or her
16 own life, then you have no reasonable doubt, and in that circumstance it is your duty to convict.

17 18 Direct and Circumstantial Evidence

19 There are two types of evidence that you may properly use in deciding whether the defendant is
20 guilty or not guilty of the crimes with which he is charged.

21 One type of evidence is called direct evidence. Direct evidence of a fact in issue is presented
22 when a witness testifies to that fact based on what he or she personally saw, heard, or otherwise

1 observed through the five senses. The second type of evidence is circumstantial evidence.

2 Circumstantial evidence is evidence that tends to prove a disputed fact indirectly by proof of other facts.

3 There is a simple example of circumstantial evidence that is often used in this courthouse.

4 Assume that when you came into the courthouse this morning, the sun was shining and it was a nice day
5 outside. Also assume that the courtroom shades were drawn and you could not look outside. Assume
6 further that as you were sitting here, someone walked in with an umbrella that was dripping wet, and
7 then, a few moments later, somebody else walked in with a raincoat that was also dripping wet.

8 Now, because you could not look outside the courtroom and you could not see whether it was
9 raining, you would have no direct evidence of that fact. But, on the combination of facts that I have
10 asked you to assume, it would be reasonable and logical for you to conclude that it was raining.

11 That is all there is to circumstantial evidence. You infer on the basis of your reason, experience,
12 and common sense from one established fact the existence or the nonexistence of some other fact.

13 The matter of drawing inferences from facts in evidence is not a matter of guesswork or
14 speculation. An inference is a logical, factual conclusion that you might reasonably draw from other
15 facts that have been proved. It is for you, and you alone, to decide what inferences you will draw.

16 Many material facts, such as a person's state of mind, are not easily proved by direct evidence.
17 Usually such facts are established by circumstantial evidence and the reasonable inferences you draw.
18 Circumstantial evidence may be given as much weight as direct evidence. The law makes no distinction
19 between direct and circumstantial evidence. The law simply requires that before convicting a defendant,
20 you must be satisfied of the defendant's guilt beyond a reasonable doubt, based on all of the evidence in
21 the case.

1 What Is and What Is Not Evidence

2 What, then, is the evidence in the case?

3 The evidence in this case is (1) the sworn testimony of the witnesses, (2) the exhibits received
4 into evidence, and (3) any stipulations made by the parties. Anything else is not evidence.

5 For example, the questions posed to a witness are not evidence: It is the witnesses' answers that
6 are evidence, not the questions. In addition, exhibits marked for identification but not admitted by me
7 are not evidence. Nor are materials brought forth only to refresh a witness's recollection. Moreover,
8 testimony that has been stricken or excluded by me is not evidence and may not be considered by you in
9 rendering your verdict.

10 Arguments by the advocates are also not evidence. What you heard during the opening
11 statements and summations is merely intended to help you understand the evidence and reach your
12 verdict. If your recollection of the facts differs from the lawyers' statements, you should rely on your
13 recollection. If a lawyer made a statement during his or her opening or summation and you find that
14 there is no evidence to support the statement, you should disregard the statement.

15 Last, any statements that I may have made during the trial or during these instructions do not
16 constitute evidence. At times, I may have admonished a witness or directed a witness to be responsive
17 to questions or to keep his or her voice up. At times, I may have asked a question myself. Any
18 questions that I asked, or instructions that I gave, were intended only to clarify the presentation of
19 evidence and to bring out something that I thought might be unclear. You should draw no inference or
20 conclusion of any kind, favorable or unfavorable, with respect to any witness or any party in the case, by
21 reason of any comment, question, or instruction of mine. The rulings I have made during the trial and
22 these instructions are no indication of my views of what your decision should be. Nor should you infer

1 that I have any views as to the credibility of any witness, as to the weight of the evidence, or as to how
2 you should decide any issue that is before you. That is entirely your role.

3 Finally, I instruct you that all of the evidence presented to you in this case was lawfully obtained.
4 Whether you approve or disapprove of how any evidence was obtained should not enter into your
5 deliberations.

6
7 Credibility of Witnesses

8 How do you evaluate the credibility or believability of the witnesses? The answer is that you use
9 your common sense. There is no magic formula by which you can evaluate testimony. You may use the
10 same tests here that you use in your everyday life when evaluating statements made by others to you.
11 You may ask yourselves: Did the witness impress you as open, honest, and candid? How responsive
12 was the witness to the questions asked on direct examination and on cross-examination?

13 If you find that a witness intentionally told a falsehood, that is always a matter of importance you
14 should weigh carefully. On the other hand, a witness may be inaccurate, contradictory, or even
15 untruthful in some respects and entirely believable and truthful in other respects. It is for you to
16 determine whether such inconsistencies are significant or inconsequential, and whether to accept or
17 reject all of the testimony of any witness, or to accept or reject only portions.

18 You are not required to accept testimony even though the testimony is uncontradicted and the
19 witness's testimony is not challenged. You may reject it because of the witness's bearing or demeanor,
20 or because of the inherent improbability of the testimony, or for other reasons sufficient for you to
21 conclude that the testimony is not worthy of belief.

22 In evaluating the credibility of the witnesses, you should take into account any evidence that a
23 witness may benefit in some way from the outcome of the case. Such an interest in the outcome creates

1 a motive to testify falsely and may sway a witness to testify in a way that advances his or her own
2 interests. Therefore, if you find that any witness whose testimony you are considering may have an
3 interest in the outcome of this trial, you should bear that factor in mind when evaluating the credibility
4 of his or her testimony and decide whether to accept it with great care.

5 Keep in mind, though, that it does not automatically follow that testimony given by an interested
6 witness is to be disbelieved. There are many people who, no matter what their interest in the outcome of
7 the case may be, would not testify falsely. It is for you to decide, based on your own perceptions and
8 common sense, to what extent, if at all, the witness's interest has affected his or her testimony.

9
10 Expert Witnesses

11 You have heard testimony from an expert witness. As I previously explained, an expert witness
12 is someone who, by education or experience, has acquired learning or experience in a specialized area of
13 knowledge. Such a witness is permitted to express his opinions on matters about which he has
14 specialized knowledge and training. The parties may present expert testimony to you on the theory that
15 someone who is experienced in the field can assist you in understanding the evidence or in reaching an
16 independent decision on the facts.

17 Your role in judging credibility applies to the expert as well as other witnesses. In weighing an
18 expert's opinion, you may consider the expert's qualifications, education, and reasons for testifying, as
19 well as all of the other considerations that ordinarily apply, including all the other evidence in the case.
20 If you find the opinion of an expert is based on sufficient data, education, and experience, and the other
21 evidence does not give you reason to doubt his conclusions, you would be justified in placing reliance
22 on his testimony. However, you should not accept witness testimony simply because the witness is an
23 expert. The determination of the facts in this case rests solely with you.

1 Law Enforcement and Government Witnesses

2 You have heard testimony from law enforcement or other government witnesses. The fact that a
3 witness may be employed as a law enforcement official or government employee does not mean that his
4 or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than
5 that of an ordinary witness. It is your decision, after reviewing all the evidence, whether to accept the
6 testimony of any law enforcement witness or government witnesses, as it is with every other type of
7 witness, and to give to that testimony the weight you find it deserves.

8
9 Preparation and Representation of Witnesses

10 You have heard evidence during the trial that witnesses have discussed the facts of the case and
11 their testimony with the lawyers before the witnesses appeared in court. You have also heard evidence
12 that some of the witnesses have lawyers of their own. Although you may consider these facts when you
13 are evaluating a witness's credibility, it is common for a witness to meet with lawyers before testifying
14 so that the witness can be aware of the subjects he or she will be questioned about, focus on the subjects,
15 and have the opportunity to review relevant exhibits before being questioned about them. In fact, it
16 would be unusual for a lawyer to call a witness without such consultation. Additionally, it is not unusual
17 for a witness in a criminal case to have a lawyer of his or her own. As always, the weight you give to
18 the fact or the nature of these issues and what inferences you draw from them are matters completely
19 within your discretion.

20
21 Uncalled Witnesses

22 There are people whose names you have heard during the course of the trial but who did not
23 appear here to testify. I instruct you that each party had an equal opportunity, or lack of opportunity, to

1 call any of these witnesses. Therefore, you should not draw any inferences or reach any conclusions as
2 to what they would have testified to had they been called. Their absence should not affect your
3 judgment in any way.

4 You should, however, remember my instruction that the law does not impose on a defendant in a
5 criminal case the burden or duty of calling any witness or producing any evidence. The burden of proof
6 remains at all times with the Government.

7
8 Number of Witnesses and Uncontradicted Testimony

9 The fact that one party called more witnesses or introduced more evidence does not mean that
10 you should necessarily find the facts in favor of the side offering the most witnesses and the most
11 evidence. After examining all the evidence, you may decide that the party calling the most witnesses
12 has not persuaded you because you do not believe its witnesses, or because you do believe the fewer
13 witnesses called by the other side.

14 Again, you should also keep in mind that the burden of proof is always on the Government. The
15 defendant is not required to call any witnesses or offer any evidence, since he is presumed to be
16 innocent. On the other hand, the Government is not required to prove each element of the offense by
17 any particular number of witnesses. The testimony of a single witness may be enough to convince you
18 beyond a reasonable doubt of the existence of the elements of the charged offenses — if you believe that
19 the witness has truthfully and accurately related what he or she has told you. The testimony of a single
20 witness may also be enough to convince you that reasonable doubt exists, in which case you must find
21 the defendant not guilty.

1 Stipulations

2 Stipulations were entered into relating to various facts in this case. A stipulation is an agreement
3 between parties as to what certain facts were. You should consider the weight to be given such evidence
4 just as you would any other evidence.

5
6 Limited Purpose Evidence

7 If certain testimony or evidence was received for a limited purpose, you must follow the limiting
8 instructions I have given.

9
10 Charts and Summaries

11 The parties presented exhibits in the form of charts and summaries. As I mentioned to you earlier,
12 I admitted these charts and summaries in place of, or in addition to, the underlying testimony or
13 documents that they represent in order to save time and avoid unnecessary inconvenience. They are no
14 better than the testimony or the documents upon which they are based. Therefore, you are to give no
15 greater consideration to these charts or summaries than you would give to the evidence upon which they
16 are based. It is for you to decide whether they correctly present the information contained in the
17 testimony and in the exhibits on which they were based.

18
19 Particular Investigative Techniques

20 You have heard reference to certain investigative techniques that were used or not used by the
21 Government in this case. There is no legal requirement that the Government prove its case through any
22 particular means. While you are to carefully consider the evidence and/or lack of evidence adduced by
23 the Government, you are not to speculate as to why the Government used the techniques it did or why it

1 did not use other techniques. Your concern is to determine whether or not, on the evidence or lack of
2 evidence, the Government has met its burden of proving each element of each charge beyond a
3 reasonable doubt.

4
5 Persons Not on Trial

6 You may not draw any inference, favorable or unfavorable, toward the Government or the
7 defendant from the fact that any person was not named as a defendant in this case, and you may not
8 speculate as to the reasons why other people are not on trial before you now. Those matters are wholly
9 outside your concern and have no bearing on your function as jurors in deciding the case before you.

10
11 All Available Evidence Need Not Be Introduced

12 The law does not require any party to call as witnesses all persons who may have been present at
13 any time or place involved in the case, or who may appear to have some knowledge of the matter in
14 issue at this trial. Nor does the law require any party to produce as exhibits all relevant papers and
15 things available to either party during the course of the trial.

16
17 The Defendant's Testimony

18 The defendant did not testify. Under our Constitution, a defendant is presumed innocent and has
19 no obligation to testify or to present any other evidence because, as I have told you many times, it is the
20 Government's burden to prove the defendant guilty beyond a reasonable doubt. That burden remains on
21 the Government throughout the entire trial and never shifts to the defendant. A defendant is never
22 required to prove that he is innocent.

You may not attach any significance to the fact that the defendant did not testify. No positive or negative inference, for or against, the defendant may be drawn by you because the defendant did not take the witness stand. You may not speculate as to why he did not testify. You may not consider this in any way in your deliberations in the jury room.

II. SUBSTANTIVE CHARGES

That concludes my introductory instructions. Let me now turn to the charges.

The Indictment

The defendant is formally charged in an Indictment. As I instructed you at the outset of this case, the Indictment is simply a charge or accusation. It is not evidence.

The Indictment contains two charges, or “counts,” against Nathaniel Chastain. Each count accuses the defendant of committing a different crime and I will discuss each count in turn. You must, as a matter of law, consider each count, and you must return a separate verdict for each count in which the defendant is charged. A verdict of not guilty on Count One, however, requires that you return a verdict of not guilty for Count Two. If you should, however, find the defendant guilty on Count One, you are not required to find him guilty on Count Two.

Count One charges the defendant with wire fraud. Specifically, it charges that, from at least in or about June 2021 to at least in or about September 2021, the defendant misappropriated OpenSea's confidential business information by purchasing NFTs that he knew were going to be featured on OpenSea's homepage and then reselling them after they had been featured and appreciated in value.

Count Two charges the defendant with concealment money laundering. Specifically, it charges that, from at least in or about June 2021 to at least in or about September 2021, the defendant conducted

1 financial transactions involving the proceeds of the wire fraud charged in Count One in a manner that
2 was designed to conceal the nature, location, source, ownership, or control of the proceeds.

3 I remind you that whatever opinions or understandings you may have about terms that you may
4 have heard during trial, including “fraud,” “confidential business information,” “money laundering,” or
5 “insider trading,” you should disregard them. I will explain the elements that the Government must
6 prove beyond a reasonable doubt for you to find the defendant guilty of each crime with which he is
7 charged, namely wire fraud and money laundering, and it is my instructions you should follow.

8
9 Count One: Elements

10 In order to find the defendant guilty of Count One, which charges him with wire fraud, the
11 Government must prove the following three elements beyond a reasonable doubt:

12 *First*, that there was a scheme or artifice to defraud OpenSea of its property — specifically, its
13 confidential business information;

14 *Second*, that the defendant knowingly, willfully, and with the intent to defraud, devised or
15 participated in the scheme or artifice; and

16 *Third*, that an interstate or international wire communication was used in furtherance of the
17 scheme or artifice.

18 I will discuss each element in turn.
19

20 Count One — First Element: Existence of a Scheme or Artifice

21 The first element the Government must prove beyond a reasonable doubt with respect to Count
22 One is that there was a scheme or artifice to defraud OpenSea of its property — specifically, its
23 confidential business information. Note that Count One charges the defendant with defrauding

1 OpenSea; he is not charged with defrauding any parties other than OpenSea, such as NFT collectors,
2 artists, or members of OpenSea's user base.

3 A "scheme or artifice" is merely a plan for the accomplishment of an object. A "scheme to
4 defraud" exists when an individual engages in any plan, device, or course of action to accomplish a
5 fraudulent objective.

6 "Fraud" is a general term that includes all efforts and means that an individual may devise to
7 deprive another of money or property by trick, deception, swindle, or overreaching. In order to establish
8 a scheme to defraud, the Government need not show that the defendant made a misrepresentation. You
9 may find the existence of a scheme to defraud if you find that the conduct of the defendant was
10 deceptive or if you find that the defendant conducted himself in a manner that departed from traditional
11 notions of fundamental honesty and fair play in the general and business life of society. As is pertinent
12 here, the alleged "scheme to defraud" is fraudulently embezzling or fraudulently misappropriating
13 property belonging to another. The word "misappropriate" refers to the fraudulent appropriation of
14 property by a person to whom such property has been entrusted. A person commits "misappropriation"
15 when he fraudulently converts to his own use property belonging to another where the property initially
16 lawfully came within his possession or control.

17 As is pertinent here, a "scheme to defraud" includes fraudulently misappropriating property
18 belonging to another. A "scheme to defraud" must have some amount of money or property as its
19 object. The amount need not be large; any amount suffices.

20 A company's "confidential business information" is a type of property. Information is
21 "confidential business information" if it was acquired or created by a business for a business purpose,
22 and the business both considered and treated that information in a way that maintained the company's
23 exclusive right to that information. The company must both consider the information to be confidential

1 and take affirmative steps to treat the information as confidential and maintain exclusivity; if an
2 employer “considers” information to be confidential but does not take affirmative steps to treat it as such
3 and maintain exclusivity, it does not qualify as property. Factors you may consider in determining
4 whether OpenSea treated the information at issue as confidential include, but are not limited to: written
5 company policies and agreements, employee training, measures the employer has taken to guard the
6 information’s secrecy, the extent to which the information is known outside the employer’s place of
7 business, and the ways in which other employees may access and use the information. You may also
8 consider whether the information had economic value to the employer, but the Government is not required
9 to prove that the information had such value.

10 Nor is it necessary for the Government to prove that the defendant actually realized any gain
11 from the scheme or that the intended victim actually suffered any loss. You must concentrate on
12 whether there was a scheme or artifice, not on the consequences of the scheme or artifice. Of course,
13 proof concerning the accomplishment of the goals of a scheme or artifice may be the most persuasive
14 evidence of the existence of the scheme or artifice itself.

15 A scheme to defraud need not be shown by direct evidence, but may be established by all of the
16 circumstances and facts in the case.

17
18 Count One — Second Element: Knowledge and Intent to Defraud

19 The second element that the Government must establish beyond a reasonable doubt for purposes
20 of Count One is that the defendant devised or participated in the fraudulent scheme knowingly, willfully,
21 and with the specific intent to defraud. It is not enough for you to find that the defendant violated one or
22 more of his professional duties or an employment policy; an employee can violate his professional
23 duties or an employment policy without having an intent to defraud.

1 To “devise” a scheme to defraud is to concoct or plan it. To “participate” in a scheme to defraud
2 means to associate oneself with it, with the intent to make it succeed.

3 “Knowingly” means to act voluntarily and deliberately, rather than mistakenly or inadvertently.

4 “Willfully” means to act voluntarily and with a wrongful purpose.

5 “Intent to defraud” means to act knowingly and with the specific intent to deceive, for the
6 purpose of causing some financial or property loss to another. Thus, the defendant acted with intent to
7 defraud in the context of wire fraud if he engaged or participated in the fraudulent scheme with
8 awareness of its fraudulent or deceptive character, with an intention to be involved in the scheme to
9 defraud and to help it succeed, and with a purpose of obtaining money or property from the victim. That
10 is, the Government must prove beyond a reasonable doubt that the defendant contemplated some actual
11 harm or injury to a victim with respect to the victim’s money or property; depriving a property owner of
12 its exclusive right to use property is a form of harm. But the Government does not need to prove that the
13 intended victim was actually harmed; only that the defendant intended to harm the victim by obtaining
14 money or property. The Government is also not required to prove that the defendant realized any gain
15 from the scheme, although you may consider any gain the defendant realized in determining whether the
16 defendant participated in the scheme.

17 Since an essential element of wire fraud is intent to defraud, it follows that good faith on the part
18 of the defendant is a complete defense to a charge of wire fraud. A defendant, however, has no burden
19 to establish a defense of good faith. The burden is on the Government to prove fraudulent intent and the
20 consequent lack of good faith beyond a reasonable doubt. If the defendant participated in the scheme to

defraud, then a belief by the defendant, if such belief existed, that ultimately everything would work out so that no one would lose any money does not mean that the defendant acted in good faith.

Direct proof of knowledge and fraudulent intent is almost never available. It would be a rare case where it could be shown that a person wrote or stated that as of a given time in the past he committed an act with fraudulent intent. Such direct proof is not required. Instead, the ultimate facts of knowledge and intent, though subjective, may be established by circumstantial evidence, based upon a person's words, his conduct, his acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.

Count One — Third Element: Use of Wires

The third and final element that the Government must establish beyond a reasonable doubt with respect to Count One is that an interstate wire was used in furtherance of the scheme to defraud, within the period of the scheme charged in Count One. In this case, the parties have stipulated, or agreed, that this interstate wire element is met.

Count Two: Elements

With that, I'll turn to Count Two, which charges the defendant with concealment money laundering. Concealment money laundering occurs when a defendant conducts a financial transaction knowing that the transaction was designed in whole or in part to conceal or disguise the proceeds of specified unlawful activity — here, the wire fraud charged in Count One.

In order to find the defendant guilty of Count Two, the Government must prove the following four elements beyond a reasonable doubt:

1 *First*, that the defendant conducted (or attempted to conduct) a “financial transaction,” which
2 must in some way or degree have affected interstate commerce;

3 *Second*, that the financial transaction at issue involved the proceeds of specified unlawful
4 activity, namely the wire fraud charged in Count One of the Indictment;

5 *Third*, that the defendant knew that the financial transaction involved the proceeds of some form
6 of unlawful activity; and

7 *Fourth*, that the defendant knew that the transaction was designed to conceal or disguise the
8 nature, location, source, ownership, or control of the proceeds of wire fraud.

9 I will discuss each element in turn.

10
11 Count Two — First Element: Financial Transaction

12 The first element the Government must prove beyond a reasonable doubt with respect to Count
13 Two is that the defendant conducted a financial transaction.

14 The term “conducted” includes initiating, concluding, or participating in initiating or concluding
15 a transaction.

16 The term “financial transaction” includes any transaction that involves the movement of funds by
17 wire or other means and in any way or degree affects interstate commerce.

18 The term “funds” includes any currency, money, or other medium of exchange that can be used
19 to pay for goods and services, including digital or cryptocurrency.

20 Interstate commerce includes any transmission, transfer, or transportation between persons,
21 places, or entities located in one state (including the District of Columbia) and persons, places, or
22 entities located in another state, regardless of whether done for a business purpose or otherwise. The
23 involvement in interstate commerce can be minimal; any involvement at all will satisfy this element.

1 You do not have to decide whether the effect on interstate commerce was harmful or beneficial
2 to a particular business or to commerce in general. The Government satisfies its burden of proving an
3 effect on interstate commerce if it proves beyond a reasonable doubt any effect, whether it was harmful
4 or not.

5 In addition, it is not necessary for the Government to show that a defendant actually intended or
6 anticipated an effect on interstate commerce by his actions or that commerce was actually affected. All
7 that is necessary is that the natural and probable consequences of the acts the defendant agreed to take
8 would affect interstate commerce.

9
10 Count Two — Second Element: Specified Unlawful Activity

11 The second element that the Government must establish beyond a reasonable doubt for purposes
12 of Count Two is that the financial transactions involved the proceeds of “specified” unlawful activity.
13 Here, the “specified” unlawful activity is the wire fraud as charged in Count One. I instruct you, as a
14 matter of law, that the term “specified unlawful activity” includes wire fraud.

15 The term “proceeds” means any property, or any interest in property, that someone acquires or
16 retains as profits resulting from the commission of the specified unlawful activity.

17
18 Count Two — Third Element: Knowledge

19 The third element that the Government must establish beyond a reasonable doubt for purposes of
20 Count Two is that the defendant knew that the financial transactions at issue involved the proceeds of
21 some form, though not necessarily which form, of unlawful activity.

1 If you find beyond a reasonable doubt that the defendant committed the wire fraud offense I have
2 instructed you on in Count One, and he knew that the proceeds came from that activity, that is sufficient
3 for you to find that the defendant believed that the proceeds came from unlawful activity.

4
5 Count Two — Fourth Element: Purpose

6 The fourth and final element that the Government must establish beyond a reasonable doubt for
7 purposes of Count Two concerns the purpose of the transaction. Specifically, the Government must
8 prove beyond a reasonable doubt that the defendant conducted financial transactions with knowledge
9 that the transactions were designed in whole or in part to conceal or disguise the nature, location, source,
10 ownership, or control of the proceeds of the specified unlawful activity.

11 As I have previously instructed, to act knowingly means to act purposely and voluntarily and not
12 because of a mistake, accident, or other innocent reason. That is, the acts must be the product of the
13 defendant's conscious objective. To prove that an act is done knowingly for the purposes of this
14 element, the Government is not required to prove that the defendant knew that his acts were unlawful.

15 If you find that the evidence establishes beyond a reasonable doubt that the defendant knew of
16 the purpose of the particular transaction in issue and that he knew that the transaction was either
17 designed to conceal or disguise the true origin or ownership of the property in question, then this
18 element is satisfied. However, if you find that the defendant knew of the transaction, but did not know
19 that it was either designed to conceal or disguise the true origin of the property in question, but instead
20 thought that the transaction was intended to further the innocent transaction, you must find that this
21 element has not been satisfied and find the defendant not guilty.

1 Intent to disguise or conceal the true origin of the property need not be the sole motivating factor,
2 and the Government need not prove with regard to any single transaction that the defendant removed all
3 trace of his involvement with the money or property.
4

5 Defense Theory of the Case

6 With respect to Count One, which charges the defendant with wire fraud, the defense contends
7 the information allegedly used by the defendant in engaging in the NFT trades at issue was not
8 OpenSea's "property" because (1) the information was not valuable confidential business information
9 and (2) was not treated as such by OpenSea. The defense also contends that the defendant did not intend
10 to defraud or harm OpenSea and did not willfully disobey any law.

11 With respect to Count Two, which charges the defendant with money laundering, the defense
12 contends that the defendant did not believe any proceeds came from unlawful activity and that he acted
13 lawfully in transferring cryptocurrency involved in any NFT transactions between two cryptocurrency
14 wallets, an online "hot" wallet and a "cold" wallet or storage device. The defense contends that the
15 defendant's movement of cryptocurrency was consistent with that of a typical lawful cryptocurrency
16 user. The defense additionally contends that the defendant could not have acted to conceal his
17 transactions in light of the fact that all of the transactions at issue were carried out on a publicly
18 viewable blockchain, known as the Ethereum blockchain.
19

20 Venue

21 In addition to all of the elements that I have described for you, in order to convict the defendant
22 of each count in the Indictment, you must separately decide whether venue is proper in the Southern
23 District of New York — that is, whether an act in furtherance of each alleged crime occurred within this

District. In this case, the parties have stipulated, or agreed, that venue is proper in the Southern District of New York with respect to the charges in both Count One and Count Two.

Variance in Dates

It does not matter if the evidence you heard at trial indicates that a particular act occurred on a different date. The law requires only a substantial similarity between the dates alleged in the Indictment and the dates established by the evidence.

III. CONCLUDING INSTRUCTIONS

Selection of the Foreperson

In a few minutes, you are going to go into the jury room and begin your deliberations. Your first task will be to select a foreperson. The foreperson has no greater voice or authority than any other juror but is the person who will communicate with me when questions arise and when you have reached a verdict and who will be asked in open court to pass your completed Verdict Form to me. Notes should be signed by the foreperson and should include the date and time they were sent. They should also be as clear and precise as possible. Any notes from the jury will become part of the record in this case. So please be as clear and specific as you can be in any notes that you send. Do not tell me or anyone else how the jury stands on any issue until after a unanimous verdict is reached.

Right to See Exhibits and Hear Testimony

All of the exhibits will be given to you near the start of deliberations. In addition, you will also be provided with a list of all the exhibits that were received into evidence.

1 If you prefer to view any evidence here in the courtroom or if you want any of the testimony
2 submitted to you or read back to you, you may also request that. Keep in mind that if you ask for
3 testimony, however, the court reporter must search through her notes, the parties must agree on what
4 portions of testimony may be called for, and if they disagree, I must resolve those disagreements. That
5 can be a time-consuming process. So please try to be as specific as you possibly can in requesting
6 portions of the testimony, if you do.

7 Again, your requests for testimony — in fact, any communication with the Court — should be
8 made to me in writing, signed by your foreperson with the date and time, and given to one of the Court
9 Security Officers.

10
11 Juror Note-Taking

12 If any one of you took notes during the course of the trial, you should not show your notes to, or
13 discuss your notes with, any other jurors during your deliberations. Any notes you have taken are to be
14 used solely to assist you. The fact that a particular juror has taken notes entitles that juror's views to no
15 greater weight than those of any other juror. Finally, your notes are not to substitute for your
16 recollection of the evidence in the case. If, during your deliberations, you have any doubt as to any of
17 the testimony, you may — as I just told you — request that the official trial transcript that has been
18 made of these proceedings be submitted or read back to you.

19
20 Bias, Prejudice, and Sympathy

21 All of us, no matter how hard we try, tend to look at others and weigh what they have to say
22 through the lens of our own experience and background. We each have a tendency to stereotype others
23 and make assumptions about them. Often, we see life and evaluate evidence through a clouded filter

1 that tends to favor those like ourselves. You must do the best you can to put aside such stereotypes, for
2 all litigants and witnesses are entitled to a level playing field.

3 In particular, it would be improper for you to consider, in reaching your decision as to whether
4 the Government sustained its burden of proof, any personal feelings you may have about the defendant's
5 race, religion, national-origin, gender, sexual orientation, or age. Similarly, it would be improper for
6 you to consider any personal feelings you may have about the race, religion, national, origin, gender,
7 sexual orientation, or age of any witness or anyone else involved in this case

8 Indeed, under your oath as jurors, you are not to be swayed by bias, prejudice, or sympathy. You
9 are to be guided solely by the evidence in this case, and as you sift through the evidence, the crucial
10 question that you must ask yourselves for each count is: Has the Government proved each element of
11 each count beyond a reasonable doubt?

12 It is for you and you alone to decide whether the Government has sustained its burden of proving
13 the defendant's guilt beyond a reasonable doubt, solely on the basis of the evidence or lack of evidence
14 and subject to the law as I have instructed you.

15 It must be clear to you that once you let prejudice, bias, or sympathy interfere with your thinking,
16 there is a risk that you will not arrive at a true and just verdict.

17 If you have a reasonable doubt as to the defendant's guilt with respect to a particular count, then
18 you must render a verdict of not guilty on that particular count. On the other hand, if you should find
19 that the Government has met its burden of proving the guilt of the defendant beyond a reasonable doubt
20 with respect to a particular count, then you should not hesitate because of sympathy or any other reason
21 to render a verdict of guilty on that count.

22 I also caution you that, under your oath as jurors, you cannot allow to enter into your
23 deliberations any consideration of the punishment that may be imposed upon the defendant if he is

1 convicted. The duty of imposing a sentence in the event of conviction rests exclusively with the Court,
2 and the issue of punishment may not affect your deliberations as to whether the Government has proved
3 the defendant's guilt beyond a reasonable doubt.

4
5 Duty to Deliberate

6 The most important part of this case, members of the jury, is the part that you as jurors are now
7 about to play as you deliberate on the issues of fact. I know you will try the issues that have been
8 presented to you according to the oath that you have taken as jurors. In that oath you promised that you
9 would well and truly try the issues joined in this case and a true verdict render.

10 As you deliberate, please listen to the opinions of your fellow jurors, and ask for an opportunity
11 to express your own views. Every juror should be heard. No one juror should hold the center stage in
12 the jury room and no one juror should control or monopolize the deliberations. If, after listening to your
13 fellow jurors and if, after stating your own view, you become convinced that your view is wrong, do not
14 hesitate because of stubbornness or pride to change your view. On the other hand, do not surrender your
15 honest beliefs solely because of the opinions of your fellow jurors or because you are outnumbered.

16 Your verdict must be unanimous. If at any time you are not in agreement, you are instructed that
17 you are not to reveal the standing of the jurors, that is, the split of the vote, to anyone, including me, at
18 any time during your deliberations.

19
20 Return of the Verdict

21 We have prepared a Verdict Form for you to use in recording your decisions, a copy of which is
22 attached to these instructions. Do not write on your individual copies of the Verdict Form. My staff

1 will give the official Verdict Form to Juror Number One, who should give it to the foreperson after the
2 foreperson has been selected.

3 You should draw no inference from the questions on the Verdict Form as to what your verdict
4 should be. The questions are not to be taken as any indication that I have any opinion as to how they
5 should be answered.

6 After you have reached a verdict, the foreperson should fill in the Verdict Form and note the date
7 and time, and you should all sign the Verdict Form. The foreperson should then give a note — **not** the
8 Verdict Form itself — to the Court Security Officer outside your door stating that you have reached a
9 verdict. Do not specify what the verdict is in your note. Instead, the foreperson should retain the
10 Verdict Form and hand it to me in open court when I ask for it.

11 I will stress again that each of you must be in agreement with the verdict that is announced in
12 court. Once your verdict is announced in open court and officially recorded, it cannot ordinarily be
13 revoked.

14
15 Closing Comments

16 Finally, I say this, not because I think it is necessary, but because it is the custom in this
17 courthouse to say it: You should treat each other with courtesy and respect during your deliberations.

18 All litigants stand equal in this room. All litigants stand equal before the bar of justice. All
19 litigants stand equal before you. Your duty is to decide between these parties fairly and impartially, and
20 to see that justice is done.

21 Under your oath as jurors, you are not to be swayed by sympathy or prejudice. You should be
22 guided solely by the evidence presented during the trial and the law as I gave it to you, without regard to
23 the consequences of your decision. You have been chosen to try the issues of fact and to reach a verdict

1 on the basis of the evidence or lack of evidence. If you let sympathy or prejudice interfere with your
2 clear thinking, there is a risk that you will not arrive at a just verdict. You must make a fair and
3 impartial decision so that you will arrive at the just verdict.

4 Members of the jury, I ask your patience for a few moments longer. It is necessary for me to
5 spend a few moments with the lawyers and the court reporter at the side bar. I will ask you to remain
6 patiently in the jury box, without speaking to each other, and we will return in just a moment to submit
7 the case to you. Thank you.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

NATHANIEL CHASTAIN,

Defendant.

X

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:

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:

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:

:

:

:

X

22-CR-305 (JMF)

VERDICT FORM

All Answers Must Be Unanimous

Count One – Wire Fraud

Guilty _____ Not Guilty _____

***REMINDER: If you find the defendant Not Guilty on Count One,
you must find him Not Guilty on Count Two as well.***

Count Two – Money Laundering

Guilty _____ Not Guilty _____

Please Turn to the Next Page

After completing the Verdict Form, please sign your names in the spaces provided below, fill in the date and time, and inform the Court Security Officer that you have reached a verdict.

Foreperson

Date and Time: _____

Once you have signed the Verdict Form, please give a note — NOT the Verdict Form itself — to the Court Security Officer stating that you have reached a verdict.